1951. File No. 0 S.S.C. Exam. 51

Legal Dept.

A BRANCH

Subject:— Opinions under the Bombay School Certificate Examination Act 1948

S.S.C. Examination

363-A

[redacted]

Sr. No.	D.L./Q.No.	[redacted]	Pages.
		[redacted] Act, 1948.	
1.	3158 [redacted]	whether it would be competent for the Board to cancel the result of the examination, whether provision in Regulation ¶ 41(3) can be resorted to	1-2.
2.	6119/51 [redacted]	Section 26, - Regulation 26, 27 and 28. Whether power to prescribe condition for admission to the S.S.C. Exam. of candidates from school situated outside the State of Bombay vests in the Board, and that Govt. sanction does not seem necessary.	3-6.
3.	8256 7-6-51	Section 33(1) Whether Govt. will have to get the annual accounts of the Board audited. Whether the Board can be compelled to pay the audit charges.	7-8.
4.	10908 10-7-51	Whether the Board will have to be reconstituted as the period of office fixed under section 12 has under expired. Whether the ex-officio members will continue to be members of the Board. Whether the elected members would continue in office so long as the members nominated would have held of ice had they not been replaced. Whether Kumari Pamanjikar will cease to be a member of the Board from 11-10-51 and her renomination would be permissible under sec. 12.	9-14.
	15787 4-10-51	(i) Whether the names of persons nominated and elected under sections 3(2)(A), (B) and (C) can be notified by the Board. (ii) whether the present member elected by the Baroda University under sec. 3(2)(B) can continue in offic till a new member is elected by that University.	15-18.

Legal Department.

The provision in Regulation 41(3) can only be resorted to if there is nexus between the malpractice, fraud or other improper conduct of the candidate and the result of his examination. In other words, the malpractice, fraud or improper conduct should be in connection with the examination. In the present there is no such nexus. Consequently, this Regulation would not be available and it would not be competent for the Board to amend the result of the examination.

Sd./-
Additional Secretary to Government.

U.P. to E,D., No. 3153; dated the 20th February, 1951.

SVV
27.6.56.
4 c.

L.D.R.I. No. 8412/51.

Submitted w.r. to E.D. note dt. 24th April 1951.

Clause 3 of the Regulation 25 of the Bombay Secondary School Certificate Examination Regulations, 1950, enables the Board to examine candidates attending schools situated outside the State of Bombay subject to such conditions as may be specified by the Board. In his opinion No. 14778 dt. the 25th October, 1951 the A.L.A. advised that it will be quite necessary for the Board while giving permission under regulation 26(3) to specify conditions in what manner and before what date candidates from a school are to give intimation to the Board about their intention to appear for the examination and in what manner they are to transmit their fees for an examination. The Board by its resolution dated the 26th March, 1951 has authorised the Chairman to admit candidates from schools located outside the state on conditions stated therein. The conditions are in accordance with the requirements of Regulations Nos. 27 and 29 E.D. proceeds that according to regulation 26(3) the power to prescribe conditions for admission to the S.S.C. Examination of candidates from schools situated ouside the State of Bombay vests in the Board and that Government sanction to such conditions does not seem to be necessary. This department is requested to advise whether this view is correct.

LEGAL DEPARTMENT.

Secondary School Certificate Examination Act, 1948.
Section 26.
S.S.C. Examination Regulations, 1950.

Regulations 26, 27 & 2[illegible].

Seen and returned.

The view taken by the Education Department is correct.

Sd./-
Additional Secretary to Government.

U.R. to E.D., No. 9076; dated the 8th June, 1951.

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27.6.56.
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Legal Department.

Bombay Secondary School Certificate Act, 1948, Section 33(1).

The submission of the annual accounts to Government for audit is a statutory liability imposed on the Board under section 33(1) of the Bombay Secondary School Certificate Examination Act, 1948; and this implies that Government will have to get the annual accounts of the Board audited. In the absence of any provision enabling Government to charge fees to the Board for auditing, the Board cannot be compelled to pay the audit charges. The view taken by the Chairman of the Secondary School Certificate Examination Board at page 13 ante is correct. The amendment of the Act will be necessary to compel the Board to pay fees.

Sd./-
Additional Secretary to Government.

U.R. to E.D., No. 8956; dated the 7th June, 1951.

SVV
27.6.56.
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Legal Department.

In this case the R.L.A. is requested to advise whether the view expressed by E.D. in paragraph 1 and sub-paragraphs (i), (ii) and (iv) of paragraph 2 of its note dated 29-6-1951 is correct.

Para: 1 :- The E.D. has stated that the period of office fixed under section 12 of the Bombay Secondary School Certificate Examination Act, 1948 having expired, the Board will have to be reconstituted with effect from 11th October, 1951. Section 12 provides:

> "The members of the Board other than ex-officio members shall hold office for a term of three years from the date of the publication of their names under sub-section (3) of section 3 and on the expiration of such term, shall be eligible for being re-nominated or re-elected in accordance with the provisions of sub-section (2) of section 3;
>
> Provided that the term of office of the outgoing members shall be deemed to extend to and expire with the date on which the names of their successors elected or nominated, as the case may be, are published under subsection (3) of section 3."

It is clear from this provision that the members elected and nominated under paragraphs B and C of section 3(2) will retire from office, and new members will have to be elected and nominated as provided under those paragraphs. The question of reconstitution of the board would not arise since the Board as a whole is not subject to dissolution. Ex-officio members under paragraph A of section 3(2) shall continue in office; while the members under paragraph B will have to be elected by the Academic Councils of the Universities etc., and the members under paragraph C will have to be nominated by the State Government. The Board should, therefore, call upon the Academic Councils of the Universities, and where there are no Academic Councils in such Universities, the authorities of the Universities to elect the members and Government should nominate members under paragraph C. After the elections are held under paragraph B and nominations made under paragraph C the

Board .....

Board should publish the names of such elected or nominated members under section 3(3) whereupon the elected and nominated members on the existing Board would retire and the new members will take their office with effect from the date of publication under section 3(3). It is not necessary under sub-section (3) of section 3 to publish the names of ex-officio members under paragraph A.

Paragraph 2(i):-

(a) The ex-officio members will continue to be members of the Board by virtue of their office. These ex-officio members are enumerated in paragraph A of section 3(2). The Deputy Directors of Public Instruction has been designated as the ex-officio member on the Board by G.R.E.D. No. 7955, dated the 4th February 1930 etc. The Deputy Director of Public Instruction will, therefore, continue on the Board until some other Dy. Director of Public Instruction is designated by Government in his place. It is not necessary that the Board should re-notify the Deputy Director of Public Instruction on the Board. He will continue on the Board by virtue of his office.

(b) The Joint Director of Technical Education is an ex-officio member under clause (b) of para. A. But the designation of the Joint Director of Technical Education has since been changed. He is now called the Director of Technical Education. Consequently, clause (b) of para. A will have to be amended and until it is so amended the Director of Technical Education cannot legally continue on the Board.

(c) The view taken by E.D. in respect of the Director of Agriculture and Inspector of Commercial Schools is correct. They will continue as ex-officio members of the Board. It appears that Shri Budharani - the Educational Inspector - has been designated as an ex-officio member of the Board

under .....

under clause (d) of paragraph A. He will continue in office until his appointment is cancelled by Government. It is not necessary that the Board should re-notify his appointment on the Board.

(4) The appointment of Kumari S.Bapat, Inspectress of Girls Schools, under clause (f) of para. A will xxxx have to be similarly dealt with. She will continue on the Board, and it does not appear necessary that the Board should re-notify her appointment on the Board.

Para. 2(ii):- The members nominated under para. B of section 3(2) continued in office until they were replaced by members elected as provided therein (See section 29). These elected members would continue in office so long as the members replaced would have held office had they not been replaced x (See section 29). Consequently, their period of office would also expire on 11th October, 1951. The Board should, therefore, call upon the Academic Councils of the University etc. to elect their representatives on the Board. The view taken by the E.D. on this point is correct.

Para. 2(iv):- As observed by E.D. Kumari Panandikar will cease to be a member of the Board from 11th October, 1951, and her renomination would be permissible under section 12. The view taken by the E.D. in regard to her position on the Board is legally correct.

Sd./-
Additional Secretary to Govt.

M.R. to E.D., No. 10908; dated the 10th July, 1951.

SVV
27.6.56.
4 c.

Legal Department.

The term of office of the members elected on the Board under section 3(2)(B) will expire on the 11th October, 1951, but it appeas the Baroda University has not yet elected a new representative on the Board and proposes so to do after the meeting of the new Syndicate of the University in November, 1951. The qestions raised for the consideration of the R.L.A. are:

(i) whether the names of persons nominated and elected under sections 3(2)(A), (B) and (C) can be notified by the Board even if one member under section 3(2)(B) is not elected by the Baroda University; and

(ii) whether the present members elected by the Baroda University under section 3(2)(B) can continue in office till a new member is elected by that University.

Section 3(3) of the Bombay Secondary School Certificate Examination Act, 1948, provides that the names of persons who have been elected or nominated to be members of the Board under sub-section (2) shall be published by the Board in the Official Gazette. Section 12 provides that the members of the Board other than ex-officio members shall hold office for a term of three years from the date of publication of their names under sub-section (3) of section 3 and on the expiration of such term shall be eligible for being re-nominated or re-elected in accordance with the provisions of sub-section (2) of section 3: Provided that the term of office of the outgoing members shall be deemed to extend to and expire with the date on which the names of their successors elected or nominated, as the case may be, are published under sub-section (3) of section 3. According to the scheme of the Act it appears that the Secondary School Certificate Examination Board appointed under section 3(1) is not subject to dissolution, only the nominated and elected members retiring after the expiry of the period of three years of their office. The position on 11th October, 1951 would be that the Board would be in existince with the ex-officio members and the

Chairman in office, while the elected and nominated x members under section 3(2)(B) will be retiring, provided the new members elected and nominated to replace them have been notified in the official Gazettes by that date. If the new names are notified after 11th October 1951, the sitting members will continue till the date of notification. In the present case new members have been elected members save inthe case of one members in place of the sitting elected members have been elected and nominated in save in the case of one members representing the Baroda University. Section 3(3) provides that the names of the elected and nominated members are to be published and under section 12 the term of office of members begins from the date of publication of their names under subsection (3) of section 3. It is therefore, apparent that there would be no legal objection to publishing the names of the members elected or nominated under section 3(2)(B) and they will on such publication replace the existing elected or nominated members. So far as the representative of the Baroda University is concerned, he will continue in office until he is replaced by a member elected by the Baroda University and separately notified later. On such member being elected, his name will have to be published under section 3(3) and he will replace the existing member representing the Baroda University. Consequently, the reply to both the questions would be in the affirmative.

Sd./-
Additional Secretary to Government.

U.R. to E.D., No. 15727; dated, 4th October, 1951.

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